

WHAT ARE COUNTY ROADS?

Presenter: Tara DePuy

What are County Roads?

- A county road is a road opened, established, constructed, maintained, changed, abandoned or discontinued by the county in accordance with Title 7, chapter 14. Section 60-2-201, MCA.
- *See, also,* Section 7-14-2101(2)(b), MCA.

How are County Roads Created?

- Petition
- Dedication and Acceptance
- Easement/Right-of-Way
- Prescriptive Use
- Eminent Domain
- Transfer by State
- Resolution

The Petition Process

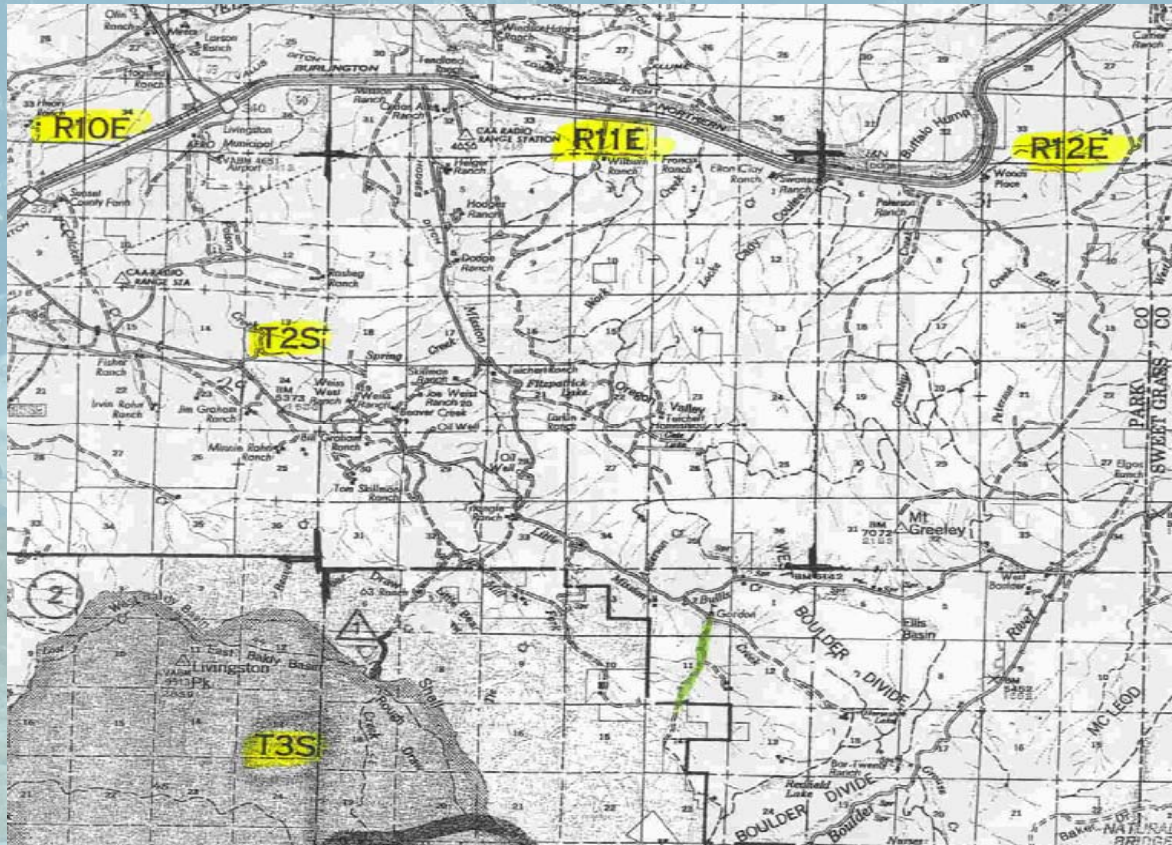
- A county road includes a road that is petitioned by freeholders, approved by resolution, and opened by a County Commission in accordance with Title 7. Section 7-14-2101(2)(b)(i), MCA.



The Petition Process

- The petition must be signed by 10 freeholders in a road district. Section 7-14-2601(1) MCA.
- The petition must set forth:
 - (1) the particular road or roads to be opened, established, constructed, changed, abandoned, or discontinued;
 - (2) the general route thereof;
 - (3) the lands and owners affected;
 - (4) whether the owners who can be found consent thereto;
 - (5) where consent is not given, the probable cost of the right-of-way;
 - (6) the necessity for and advantage of the petitioned action.Section 7-14-2602, MCA.
- Until 1959, the *Reid* rule may apply. *Reid v. Park County* (1981), 627 P.2d 1210.
 - It is sufficient if the record taken as a whole shows that a public road was created, otherwise the burden on the public in a particular case to prove a public road was created so many years ago may well be insurmountable.

The Petition Process



The Petition Process

- At a regular or special meeting, within 30 days after the petition is filed, the County Commission shall cause an investigation of the feasibility, desirability, merits and demerits of the petition and the cost of granting the petition.
- Investigation is by one Commissioner and the County Surveyor.
- After considering the petition and the investigation results, the County Commission shall enter its decisions in the minutes.

Section 7-14-2603, MCA.

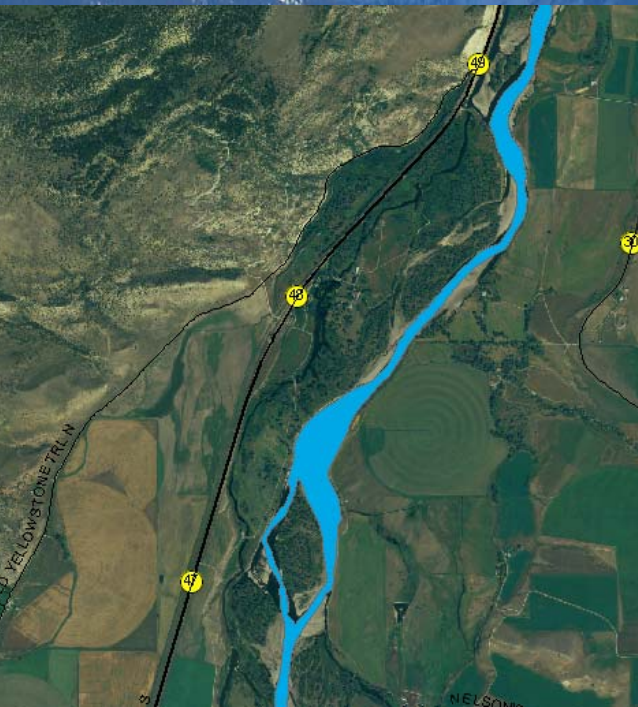
The Petition Process

- Damages must be estimated and paid to affected landowners out of the county road fund. If landowner refuses to accept damages, the County Attorney must institute eminent domain proceedings. Sections 7-14-2607 and -2608, MCA.
- Opening of road requires a resolution declaring the road to be a county road by the County Commission. Section 7-14-2605, MCA.
- With 10 days of the County Commission decision, certified notice must be mailed to all owners of land abutting the road. Section 7-14-2604, MCA.

The Petition Process

- The findings of the County Commission, plat field notes, and report of surveyor are recorded in Clerk and Recorder's Office. Section 7-14-2614, MCA.
- The Clerk and Recorder notifies the County Road Supervisor of the proper district of the road and provides the Supervisor with a certified copy of the County Commission Resolution ordering the road opened. Section 7-14-2613, MCA.

The Petition Process



**The Honorable, the Board of County Commissioners
of Park County, State of Montana**

GENTLEMEN: We, the undersigned, freeholders of Road District No. 6 in Park County, Montana, and taxable therein for road purposes, respectfully petition your honorable body to lay out, construct, open and establish a new highway in said district as follows, to wit:

Commencing at near the grade towards Holliday Ranch in Sect 15, Tp 2 So R. 9 E, changing the old County road in said Holliday grove to the brow of the hill, this change is necessary owing to the yearly washout near the said grade, and to make the road passable for all times.
Said road to extend over and upon the following lands to-wit Section 15, tp 2 So R 9 E.

Said land is owned by The Administrator of the Holliday Estate, namely John Holliday.

Names of the owners of said land who consent to said road.

Names of those who do not consent to said road.

Names of the owners of said land who cannot be found.

The probable cost of said road over the lands of those who do not consent thereto is \$.

The necessity for and the advantages of the said proposed highway are.

Fernando Galvo Very Respectfully Submitted, *O. L. Armstrong*
L. J. Swan
Art Givens
Ed. A. Highland
H. E. Mescott
Lam. Crumley
Joe H. Smith
Harry S. Smith
Mike Prael
Dan Briscoe
Boody Smith



Dedication and Acceptance

- A county road includes a road that has been dedicated for public use in the county and approved by resolution of the County Commission.

Section 7-14-2101(2)(b)(ii), MCA.

Dedication and Acceptance

- "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

Section 76-3-103(3), MCA.

- *See, also, Smith v. Moran* (1985), 693 P.2d 1246

Dedication and Acceptance

- The interest a county acquires in a statutory dedication of a roadway, is the "equivalent of a right-of-way deed ... and incidents necessary to enjoying and maintaining the public highway."

Bailey v. Ravalli County (1982), 653 P.2d 139, 142.

Dedication and Acceptance

This plat is approved subject to the understanding that the developers of this Sub-division provide gravel streets, the necessary culverts within the sub-division. Maintenance of streets and culverts will be assumed by Park County after installation.

David Riegler
Chairman

FILE FOR THE RECORD
PLAT FOR RECORDING
A Parcel of Land
T. 20 N. R. 10 E. M. 1. M.
of Park County of MONTANA.
Scale 1" = 80'

Plat No. 16
Dated 10-9-57
N 51° 0' 0" W 1235' 0" L
Dec. 4 81477

John J. D'Arche Homestead located between the corners 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 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2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 22

Easement/Right-of-Way

- County Commission shall contract, agree for, purchase, or otherwise lawfully acquire rights-of-way for county roads over private property. It may institute proceedings under Title 70, chapter 30, paying for such right-of-way from the county road fund.
- County Commission shall acquire rights-of-way for county roads and discontinue or abandon them *only upon proper petition*.
- By taking or accepting interests in real property for county roads, the public acquires only the right-of-way and the incidents necessary to enjoying and maintaining it.

Section 7-14-2107, MCA.

Easement/Right-of-Way

- When a right-of-way is voluntarily given or purchased, a written instrument conveying the right-of-way and incidents to the right-of-way must be signed and acknowledged by the person making it. The instrument must then be recorded in the local County Clerk and Recorder's Office.
- When a right-of-way is condemned pursuant to Title 70, chapter 30, a certified copy of the judgment must be made and filed in the local County Clerk and Recorder's Office.
- Both types of instruments must particularly describe the land.

Section 7-14-2108, MCA.

Easement/Right-of-Way

GRANT OF EASEMENT FOR HIGHWAY

This Indenture, Made and entered into this 6th day of July, 1923, by and between Mrs. S. L. Holliday widow ~~single~~, (or if a single man so state) of Park County, Montana, part Y of the first part, and the County of Park, a municipal corporation and subdivision of the State of Montana, the party of the second part,

WITNESSETH: That the party of the first part, in consideration of the sum of One Dollar, lawful money of the United States, in hand paid, the receipt whereof is hereby acknowledged, and in further consideration of the building and laying out of a public highway upon the premises hereinafter conveyed and described, does hereby grant, and convey unto the party of the second part, the following described premises in the County of Park, State of Montana, as follows: a Right-of-Way and Easement for a public highway in, over and across the Section 11 and 14 in Township three south, of Range nine East M. P. M., being a strip or parcel of land 60 feet wide and feet long approximately, more particularly described as a strip or parcel of land feet on each side of the following line, to-wit:

Beginning at a point in the center of the Yellowstone Park Branch of the Northern Pacific Railway Company's right of way fifty feet north of the north end of five bent pile bridge approximately 1500 feet south of mile post B 5, thence S. 38 degrees 18' W. 390 feet, thence S. 40 degrees 48' W. 200 feet, thence S. 31 degrees 48' W. 200 feet to a point in present old road the initial point or proposed new right of way whence a strip of ground forty feet in width being twenty feet on each side of the following described center line, to-wit: S. 60 degrees 48' W. 100 feet, thence S. 27 degrees 28' W. 250 feet, thence S. 11 degrees 40' W. 90 feet thence S. 32 degrees 40' W. 119 feet thence 49 degrees W. 141 feet, thence S. 40 degrees 07' W. 363 feet, thence S. 73 degrees 32' W. 100 feet thence S. 80 degrees 52' W. 637 feet, thence S. 59 degrees 17' W. 100 feet, thence S. 77 degrees 35' W. 115 feet, thence S. 61 degrees W. 428 feet, thence S. 36 degrees 41' W. 367 feet, thence S. 0 degrees 43' W. 275 feet, thence S. 29 degrees 30' W. 335 feet, thence S. 44 degrees W. 220 feet, thence S. 24 degrees 410 feet, thence S. 28 degrees 30' W. 350 feet, thence S. 37 degrees 50' W. 100 feet, thence S. 56 degrees 40' W. 163 feet, to a point on the top of hill whence in a southerly direction to a point in present county road.

Prescriptive Use

- A county road can be created by prescriptive use of a road by the public for purposes other than just recreational uses.
- Prescriptive use which establishes a county road can only be determined by a Court.
- Prescriptive use is determined on the facts particular to that road.

Prescriptive Use

- The following factual elements must be established:
 - Road must be open to the public.
 - Use of road must be notorious.
 - Use of road must be adverse to landowner.
 - Use of road must be continuous and uninterrupted for the complete statutory time period.
- Leffingwell v. Park County* (1996), 916 P.2d 751.

Prescriptive Use

- Statutory time periods for which road must have been used by the public depend on date of use.

– 1865-1877	3 years
– 1877-1895	5 years
– 1895-1913	Not Applicable
– 1895-1953	10 years
– 1953-present	5 years

Prescriptive Use

- A prescriptive use county road can be extinguished by reverse adverse possession by a landowner. *Dome Mountain v. Park County* (2001), 37 P.3d 310.

Prescriptive Use

- County road established by prescriptive use can only be used for the historical uses of the road.
- County road established by prescriptive use is only as wide as the width of the historical use.

See Ruana v. Grigonis (1996), 913 P.2d 1247.

Eminent Domain

- A county road includes a road that has been acquired by eminent domain pursuant to Title 70, chapter 30, and accepted by resolution as a county road by a County Commission.

Section 7-14-2101(2)(b)(iii), MCA.

Eminent Domain

- A County Commission shall contract, agree for, purchase, or otherwise lawfully acquire rights-of-way for county roads over private property. It may institute proceedings under Title 70, chapter 30, paying for such right-of-way from the county road fund. Section 7-14-2107(1), MCA.

Eminent Domain

- Eminent domain requires a proper petition under the petition process in Section 7-14-2602, MCA.
- *See* Section 7-14-2107(2) MCA and *Madison County v. Elford* (1983), 661 P.2d 1266, 203 Mont. 293.

Eminent Domain

- When a right-of-way is condemned pursuant to Title 70, chapter 30, a certified copy of the judgment of the court must be made. The copy must then be filed in the office of the clerk of the county where the land is located.
- The judgment must particularly describe the land.

Section 7-14-2108(2) and (3), MCA.

Transfer by State

- A road that is abandoned by the state may be designated as a county road upon the acceptance and approval by resolution of a County Commission. Section 7-14-2101(3)(c), MCA.



Transfer by State

RESOLUTION NO. 669

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS

OF PARK COUNTY, MONTANA, ACCEPT PUBLIC ROAD EASEMENT FOR MILL CREEK

ROAD (National Forest System Road No. 486)

WHEREAS, on November 12, 1998, the United States of America, through the Forest Service, Department of Agriculture, granted to Park County an easement for a public road and highway across a strip of land specifically described in a Public Road Easement filed on Roll 133, Page 1500, records of Park County Clerk and Recorder;

WHEREAS, the public road is more commonly known as Mill Creek Road (National Forest System Road No. 486);

WHEREAS, Park County agreed to accept the Mill Creek Road as a county road from the Forest Service after certain improvements were made to the road;

WHEREAS, said improvements were made to the Mill Creek Road to the Forest Service Department;

NOW THEREFORE, IT IS HEREBY RESOLVED that Park County accepts the Public Road Easement for the Mill Creek Road (National Forest System Road No. 486) as described in the Public Road Easement on record with the Park County Clerk of Court as a county road, subject to the terms, provisions and conditions in the Public Road Easement.

Resolution

- Following a public hearing, a County Commission may accept by resolution a road that has not previously been considered a county road but that has been laid out, constructed, and maintained with state department of transportation or county funds.
- A survey is not required of an existing county road that is accepted by resolution by a County Commission.

Section 7-14-2101(3)(a) and (b), MCA.

Resolution

- When a right-of-way is voluntarily given or purchased, a written instrument conveying the right-of-way and incidents to the right-of-way must be signed and acknowledged by the person making it. The instrument must then be recorded in the office of the clerk of the county where the land is located.
- The instrument must particularly describe the land.

Section 7-14-2108, MCA.

Resolution

RESOLUTION NO. 859

A RESOLUTION BY THE PARK COUNTY COMMISSION ACCEPTING A DEEP CREEK ROAD AS A COUNTY ROAD

WHEREAS, Section 7-14-2101(3Xa), MCA, 2003, sets forth a procedure whereby a board of county commissioners may accept by resolution a road that has not previously been considered a county road but that has been laid out, constructed, and maintained with county funds;

WHEREAS, Section 7-14-2101(3)(b) does not require a survey of an existing county road that is accepted by resolution of a board of county commissioners;

WHEREAS, Section 7-14-2101(3)(a), MCA, 2003, requires a public hearing;

WHEREAS, Lower Deep Creek Road has not previously been considered a county road but Park County has expended funds in the past to maintain Deep Creek Road;

WHEREAS, the road that is to be accepted as Deep Creek Road by the Park County Commission is depicted on Exhibit A attached hereto.

NOW THEREFORE, BE IT RESOLVED that the Park County Commission hereby accepts Deep Creek Road as depicted on Exhibit A as a county road.

BE IT FURTHER RESOLVED that turnouts shall be in areas where the right of way is 60 feet or greater.

BE IT FURTHER RESOLVED that there shall be a twelve foot (from visual center road surface right of way, ergo 24 foot minimum, which is the historical width the County has plowed.

BE IT FURTHER RESOLVED that the Park County Road Supervisor shall have the final authority regarding rocks or trees that should be removed from the right of way.

BE IT FURTHER RESOLVED that the turnaround area for the county shall be within the 60 foot right of way of the property owned by the Tecca family (immediately after the road leaves the property owned by the Strong family) as of the date of this resolution.

Adopted this 3V day of March, 2005, as moved by Commissioner Lahren and seconded by Commissioner Durgan, and passed on a unanimous vote of the board.

Effective on passage and

approval. DATED this 3V day



Research Tips

- Research law at the time it is believed a road became a county road.
- Research county road maintenance records.
- Research old maps showing county roads.
- Research gas tax records/maps.
- Research local museum records, especially for photographs of roads.
- Research old school district records.
- Research commissioner minutes, resolutions. May be in another county.
- Depose the "old timers".
- Research geo-yellow cards in assessor's office.

Contact Information

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